

(B) bid protest procedures developed under the authority of subchapter V of chapter 35 of title 31; subsections (e) and (f) of section 2305 of title 10; or subsections (h) and (i) of section 253b of this title.

(b) Covered law

Except as provided in subsection (a)(3) of this section, the list referred to in subsection (a)(1) of this section shall include each provision of law that, as determined by the Administrator, imposes on persons who have been awarded contracts by the Federal Government for the procurement of commercially available off-the-shelf items Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services, except the following:

(1) A provision of law that provides for criminal or civil penalties.

(2) A provision of law that specifically refers to this section and provides that, notwithstanding this section, such provision of law shall be applicable to contracts for the procurement of commercially available off-the-shelf items.

(c) “Commercially available off-the-shelf item” defined

(1) As used in this section, the term “commercially available off-the-shelf item” means, except as provided in paragraph (2), an item that—

(A) is a commercial item (as described in section 403(12)(A) of this title);

(B) is sold in substantial quantities in the commercial marketplace; and

(C) is offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.

(2) The term “commercially available off-the-shelf item” does not include bulk cargo, as defined in section 1702 of title 46, Appendix, such as agricultural products and petroleum products.

(Pub. L. 93-400, § 35, as added Pub. L. 104-106, div. D, title XLII, § 4203(a), Feb. 10, 1996, 110 Stat. 654; amended Pub. L. 105-85, div. A, title X, § 1073(g)(2)(C), Nov. 18, 1997, 111 Stat. 1906.)

CODIFICATION

Another section 35 of Pub. L. 93-400 was renumbered § 38 and is classified to section 434 of this title.

AMENDMENTS

1997—Subsec. (b)(2). Pub. L. 105-85 substituted “commercially available” for “commercial”.

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

§ 432. Value engineering

(a) In general

Each executive agency shall establish and maintain cost-effective value engineering procedures and processes.

(b) “Value engineering” defined

As used in this section, the term “value engineering” means an analysis of the functions of a

program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life cycle costs.

(Pub. L. 93-400, § 36, as added Pub. L. 104-106, div. D, title XLIII, § 4306(a), Feb. 10, 1996, 110 Stat. 665.)

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

§ 433. Acquisition workforce

(a) Applicability

This section does not apply to an executive agency that is subject to chapter 87 of title 10.

(b) Management policies

(1) Policies and procedures

The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5.

(2) Uniform implementation

The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

(3) Government-wide policies and evaluation

The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

(c) Senior procurement executive authorities and responsibilities

Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

(d) Management information systems

The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementation of this section. To the maximum extent practicable, such data requirements shall conform to standards established by the Office of Personnel Management for the Central Personnel Data File.

(e) Applicability to acquisition workforce

The programs established by this section shall apply to the acquisition workforce of each executive agency. For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A) of this section.

(f) Career development**(1) Career paths**

The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make information available on such career paths.

(2) Critical duties and tasks

For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

(3) Mandatory training and education

For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency shall also encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

(4) Performance incentives

The head of each executive agency shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce which rewards performance of employees that contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

(A) relate pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 263(b) of this title); and

(B) provide for consideration, in personnel evaluations and promotion decisions, of the

extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.

(g) Qualification requirements**(1) In general**

(A) Subject to paragraph (2), the Administrator shall establish qualification requirements, including education requirements, for the following positions:

(i) Entry-level positions in the General Schedule Contracting series (GS-1102).

(ii) Senior positions in the General Schedule Contracting series (GS-1102).

(iii) All positions in the General Schedule Purchasing series (GS-1105).

(iv) Positions in other General Schedule series in which significant acquisition-related functions are performed.

(B) Subject to paragraph (2), the Administrator shall prescribe the manner and extent to which such qualification requirements shall apply to any person serving in a position described in subparagraph (A) at the time such requirements are established.

(2) Relationship to requirements applicable to defense acquisition workforce

The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10 with appropriate modifications.

(3) Approval of requirements

The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. If the Director does not disapprove a requirement or prescription within 30 days after the date on which the Director receives it, the requirement or prescription is deemed to be approved by the Director.

(h) Education and training**(1) Funding levels**

(A) The head of an executive agency shall set forth separately the funding levels requested for education and training of the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(B) Funds appropriated for education and training under this section may not be obligated for any other purpose.

(2) Tuition assistance

The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5 for personnel serving in acquisition positions in the agency.

(Pub. L. 93-400, § 37, as added Pub. L. 104-106, div. D, title XLIII, § 4307(a)(1), Feb. 10, 1996, 110 Stat. 666.)

REFERENCES IN TEXT

Section 5051(c) of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (b)(3), is section

5051(c) of Pub. L. 103-355, which is set out as a note under section 263 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 405 of this title.

§ 434. Modular contracting for information technology

(a) In general

The head of an executive agency should, to the maximum extent practicable, use modular contracting for an acquisition of a major system of information technology.

(b) Modular contracting described

Under modular contracting, an executive agency's need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) Implementation

The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attainment of those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occur during conduct of the earlier increments;

(2) a contract for an increment of an information technology acquisition should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued and, if the contract for that increment cannot be awarded within such period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the date on which the solicitation resulting in award of the contract was issued.

(Pub. L. 93-400, § 38, formerly § 35, as added Pub. L. 104-106, div. E, title LII, § 5202(a), Feb. 10, 1996,

110 Stat. 690; renumbered § 38, Pub. L. 104-201, div. A, title X, § 1074(d)(1), Sept. 23, 1996, 110 Stat. 2660.)

EFFECTIVE DATE

Section effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 702.

§ 435. Levels of compensation of certain contractor personnel not allowable as costs under certain contracts

(a) Determination required

For purposes of section 2324(e)(1)(P) of title 10 and section 256(e)(1)(P) of this title, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection the Administrator shall consult with the Director of the Defense Contract Audit Agency and such other officials of executive agencies as the Administrator considers appropriate.

(b) Benchmark compensation amount

The benchmark compensation amount applicable for a fiscal year is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (a) of this section is made.

(c) Definitions

In this section:

(1) The term “compensation”, for a fiscal year, means the total amount of wages, salary, bonuses and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

(2) The term “senior executives”, with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.

(3) The term “benchmark corporation”, with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of \$50,000,000 for the fiscal year.

(4) The term “publicly-owned United States corporation” means a corporation organized under the laws of a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States the voting stock of which is publicly traded.

(5) The term “fiscal year” means a fiscal year established by a contractor for accounting purposes.

(Pub. L. 93-400, § 39, as added Pub. L. 105-85, div. A, title VIII, § 808(c)(1), Nov. 18, 1997, 111 Stat. 1837; amended Pub. L. 105-261, div. A, title VIII, § 804(c)(1), Oct. 17, 1998, 112 Stat. 2083.)

CODIFICATION

Another section 39 of Pub. L. 93-400 is classified to section 436 of this title.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105-261 amended par. (2) generally. Prior to amendment, par. (2) read as follows: